

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
LILLIE MAE WILLIAMS	:	DETERMINATION
	:	DTA NO. 818908
for Redetermination of a Deficiency or for Refund of	:	
Personal Income Tax under Article 22 of the Tax Law	:	
for the Year 1981.	:	

Petitioner, Lillie Mae Williams, 486 Third Street, Apartment 1, Albany, New York 12201, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1981.

A hearing was held before Timothy J. Alston, Administrative Law Judge, at the offices of the Division of Tax Appeals, 500 Federal Street, Troy, New York, on September 17, 2002 at 10:00 A.M., with all briefs submitted by December 18, 2002, which date began the six-month period for the issuance of this determination. Petitioner appeared *pro se*. The Division of Taxation appeared by Barbara G. Billet, Esq. (Justine Clarke Caplan, Esq., of counsel).

ISSUE

Whether petitioner's refund claim was timely filed and, if so, whether the Division of Taxation had previously granted and paid such claim.

FINDINGS OF FACT

1. Petitioner, Lillie Mae Williams, filed a New York State personal income tax return for the year 1981 on or before April 15, 1982. Petitioner's return reported \$6,496.00 in New York income, \$173.91 in New York State income tax withheld, and claimed a refund of \$156.91.¹

2. The Division of Taxation ("Division") issued a refund check to petitioner in the amount claimed on the return on May 14, 1982. The refund was mailed to petitioner at the address listed on her 1981 return: 175-1 Street # 12M, Newark, New Jersey.

3. Petitioner resided in Freeport, New York in 1981 and continued to reside there until March of 1982 when she moved to 175-1 Street # 12M, Newark, New Jersey.

4. On September 3, 1999 petitioner filed a second income tax return (Form IT-200) for the year 1981 seeking a refund of \$153.91. Petitioner attached a 1981 Form W-2 Wage and Tax Statement to the return which showed wages of \$6,601.54 paid to petitioner and State income tax of \$173.91 withheld by petitioner's employer, the County of Nassau, New York. The W-2 also contained, at the top, the word "Reissue."

5. By letter dated November 29, 1999, the Division denied petitioner's refund claim as untimely filed.

6. The Division's record of outstanding (i.e., uncashed) refund checks issued in 1982 does not include the check issued to petitioner on May 14, 1982. Due to the passage of time, the Division no longer has copies of any canceled refund checks from 1982, such checks having been destroyed as part of normal Division operations.

¹ Information regarding petitioner's 1981 return was determined by a review of a microfiche transcript of the return. A copy of this transcript was entered into evidence at the hearing. The actual return had been destroyed as part of the normal course of the Division's record keeping procedures.

SUMMARY OF PETITIONER'S POSITION

7. Petitioner asserts that another individual, using her name and social security number and forging her signature, filed the tax return in 1982. Petitioner asserts that this same individual cashed the refund check issued in 1982. Petitioner contends that she has been the victim of others using her social security number and identification on various occasions over the years. Petitioner asserts that she forgot to file her return in 1982 and only remembered to file in 1999.

CONCLUSIONS OF LAW

A. Addressing first petitioner's factual contentions, the record in this case shows that petitioner filed her 1981 New York tax return on or before April 15, 1982; that the Division issued a refund check to petitioner in the amount claimed on the return; that the Division mailed the refund check to petitioner at the address listed on the return; that such address was petitioner's address at that time; and that the check was cashed.

The facts thus show that the September 3, 1999 refund claim for the 1981 tax year is properly denied because the Division granted virtually the same claim in 1982.

I do not accept petitioner's contention that another individual filed her return and received and cashed her refund check in 1982. Such an extraordinary allegation requires corroboration. Petitioner has offered none. I do not question petitioner's sincerity in making these allegations, but I believe she is mistaken.

B. Turning to the statute of limitations, a claim for credit or refund of an overpayment of personal income tax must be filed within three years from the time the return was filed or two years from the time the tax was paid, whichever is later (*see*, Tax Law § 687[a]).

As noted, the record in this case shows that petitioner filed her 1981 New York tax return on or before April 15, 1982. The refund claim filed by petitioner on September 3, 1999 was therefore filed well beyond the three-year period and was properly denied.

C. Even if the facts of this case showed that the return filed on September 3, 1999 was petitioner's original return, the refund claim still would be properly denied under Tax Law § 687(a). Specifically, under that section, the amount of refund allowable may not exceed the portion of tax paid within the three-year period immediately preceding the filing of the refund claim. Petitioner's claimed overpayment of tax and refund claim for 1981 resulted from the difference between total withholding taxes collected by petitioner's employer and petitioner's total 1981 New York State income tax liability (*see*, Finding of Fact "4"). All such withholding tax is deemed to have been paid by petitioner on April 15, 1982 (*see*, Tax Law § 687[i]). Accordingly, no portion of the overpayment of tax claimed as a refund was paid during the three-year period immediately preceding the filing of the refund claim and therefore, even if the return filed on September 3, 1999 was petitioner's original return, no portion of the refund claim would be allowable under Tax Law § 687(a).

D. The petition of Lillie Mae Williams is denied and the Division of Taxation's denial of petitioner's refund claim is sustained.

DATED: Troy, New York
February 13, 2003

/s/ Timothy J. Alston
ADMINISTRATIVE LAW JUDGE